

JAMES R. HOUGHTEN
WM. A. HOUGHTEN

IBLA 83-766

Decided April 24, 1984

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring lode mining claim null and void ab initio in part. A MC-190382.

Reversed.

1. Mining Claims: Lands Subject to--School Lands: Indemnity
Selections--Segregation--State Selections

BLM may not declare a mining claim located on land subject to a State indemnity selection application null and void ab initio because of the segregative effect arising from the filing of the application pursuant to 43 CFR 2091.2-6 where the state's application was filed prior to promulgation of the regulation.

APPEARANCES: James R. Houghten, pro se, and for Wm. A. Houghten.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

James R. Houghten and Wm. A. Houghten have appealed from a decision of the Arizona State Office, Bureau of Land Management (BLM), dated June 7, 1983, declaring their lode mining claim, A MC-190382, null and void ab initio in part.

On January 21, 1983, appellants filed a notice of location with BLM for the Ropes End mining claim situated in sec. 15, T. 12 N., R. 1 E., Gila and Salt River meridian, Yavapai County, Arizona, in accordance with the requirements of section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976), and 43 CFR 3833.1-2(a) (47 FR 56305 (Dec. 15, 1982)). On February 24, 1983, appellants filed an amended notice of location with BLM which resituated the mining claim within sec. 15.

In its June 1983 decision, BLM noted that a portion of appellants' mining claim was included in a State indemnity selection application, A-17000-V, filed by the State of Arizona on October 31, 1980, which thereby segregated the land from mineral entry on the date appellants located their mining claim, January 5, 1983, pursuant to 43 CFR 2091.2-6. The state indemnity selection application was filed pursuant to the Act of February 28, 1891, as amended, 26 Stat. 796, 43 U.S.C. §§ 851, 852 (1976). BLM stated that "the portion of the Ropes End mining claim located in lots 1 and 2, section 15, T. 12 N., R. 1 E., is hereby declared null and void ab initio." (Emphasis in original.)

In their statement of reasons for appeal, appellants contend that BLM has infringed their "rights" by accepting the notice of location for recordation and then declaring a portion of the mining claim null and void ab initio, especially where, in reliance on acceptance of the notice of location and after 3 months of waiting, "Mr. Houghten sold his home and invested the money in an already existing claim dwelling and water system on the Ropes End Lode Claim site to make the claim functional for mineral exploration, evaluation and recovery." Appellants further assert that the plat map is "vague and not understandable to the lay person."

[1] The record contains a copy of the BLM status plat for T. 12 N., R. 1 E., Gila and Salt River meridian, Yavapai County, Arizona, which indicates that lots 1 and 2 of sec. 15 are subject to State indemnity selection application A-17000-V. Existing Departmental regulation, 43 CFR 2091.2-6, provides that the filing of a state indemnity selection application shall segregate the affected land from entry under the mining laws. This regulation was promulgated in 1981 in order that the lands selected would be protected from entry during the processing of the application. See 46 FR 38508 (July 28, 1981); 46 FR 24139 (Apr. 29, 1981). Prior to this, no definitive Departmental regulation existed pertaining to segregation of lands listed in a state indemnity selection application filed pursuant to 43 U.S.C. §§ 851, 852 (1976). See 43 CFR Subpart 2091 (1980).

In a recent decision, Leo Rhea Partnership, 80 IBLA 1 (1984), the Board considered the application of 43 CFR 2091.2-6 where a state selection application was filed prior to promulgation of the regulation. Therein we said at page 2:

A question arises whether this regulation applies to selections filed prior to its effective date, August 27, 1981. Neither the language employed in 43 CFR 2091.2-6 nor its precedent administrative rulemaking manifests any intent to make the promulgation retroactive to include pending applications. Moreover, BLM's Information Memorandum No. 81-257 is indicative that BLM has adopted the position that the segregative effect is only to be operative prospectively upon subsequently filed applications or applications with respect to which notice of segregative effect is published after August 27, 1981. 3/ We must, therefore, conclude that SS 1291 did not segregate the land from mining location under 43 CFR 2091.2-6.

3/ Information Memorandum No. 81-257 promulgated by BLM reads in part: "The regulations did not apply retroactively to applications currently pending or filed before Aug. 27, 1981. If segregation is appropriate for these applications, it will be necessary to publish notice of such applications. The segregation can only be effective on or after Aug. 27, 1981." Counsel for BLM concedes that no notice of SS 1291 has been published subsequent to promulgation of the regulation.

Accordingly, the filing of State indemnity selection application A-17000-V, by the State of Arizona in 1980, did not segregate the lands from the operation of the mining laws pursuant to 43 CFR 2091.2-6.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Gail M. Frazier
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge

